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May 17, 2021

Via Electronic and Certified Mail, Return Receipt Requested

Legacy Owners Group
P.O. Box 1021
Pittsboro, N.C. 27312-1021
LegacyOwnersGroup@gmail.com

Re: **Response to March 30, 2021 Letter**

Dear Legacy Owners Group:

I represent F-L Legacy Owner, LLC (F-L Legacy), the Declarant of The Legacy at Jordan Lake, in this matter. Please direct all future correspondence in this matter to me. I am writing in response to the issues raised in your March 30, 2021 letter. F-L Legacy takes the issues raised in your letter seriously and has conducted an investigation so that it can respond as thoroughly as possible. For the sake of clarity, I will respond to these issues using the same categories and in the same order as they are presented in the letter. All capitalized terms used herein have the same meaning as set forth in the Declaration of Covenants, Conditions and Restrictions for the Legacy at Jordan Lake filed with the Chatham County Register of Deeds on April 20, 2006 (the "CCR").

EXECUTIVE SUMMARY

F-L Legacy is the third developer of Legacy at Jordan Lake, joining the community in 2014. The community was begun prior to the Great Recession of 2008-2009. As the housing market collapsed during the recession, the original developer was forced to return the property to its lenders. When F-L Legacy acquired Legacy at Jordan Lake, a substantial amount of infrastructure was already in place, as well as some amenities. F-L Legacy has invested millions of dollars to complete amenities, such as an aquatics center and clubhouse. Those amenities have been dedicated to the Association at no cost.

F-L Legacy has abided by the CCR, which were drafted and approved by the initial developer. F-L Legacy advanced funds at 0% interest to subsidize Association deficits in every year from 2014 to 2020. All of these loans were disclosed and recorded. Consequently,

Association dues did not increase for seven budget years – from 2014 through 2020 – even as new amenities were completed. A modest dues increase – from $174 a month to $200 – was approved for the 2021 budget year. Home sales so far this year have tripled from the previous two years, a sign that Association fees are not deterring prospective buyers from Legacy at Jordan Lake. As more homes are sold and the Association reaches solvency – which is projected to occur this year - control of the Association Board will be turned over to residents. However, as the Association becomes able to pay its own way, it is required to repay the zero-interest advances.

As can be common in communities that went through foreclosure, there were many items in need of deferred maintenance that had been turned over to the Association prior to Freehold's involvement. For example, the prior developer hired a contractor to spray effluent on the community's three-hole golf course, but failed to get a permit to do so. When F-L Legacy learned of this, it immediately took steps to get a permit and was required to use potable water to keep the course alive during the lengthy re-permitting process. Other remediations were made to the golf course to ensure its long-term viability and cost-effective operation – such as replacing greens with varietals more suited to the local climate, and purchasing protective frost covers for the greens. These costs were appropriately paid by the Association because the golf course had already been dedicated to it. Similarly, irrigation repairs in Association areas, the cleanout of storm water retention basins and maintenance of the waterfall feature built by the initial developer all are legitimate Association costs to maintain the appearance and operation of the community. F-L Legacy takes appropriate steps with regard to maintaining water features that have not yet been dedicated to the community, and has a third-party inspection firm on site each week – and after rain events - to monitor erosion control.

With regard to the community's roads, When F-L Legacy acquired Legacy at Jordan Lake, it added a second lift to all Phase 1 roadways – at its own expense. F-L Legacy also is in the process of installing the community's final roads. The roads are constructed to accommodate a wide variety of vehicular traffic, including construction vehicles, moving vans and delivery trucks. Regular maintenance of the Association-owned streets is rightly funded by the Association. F-L Legacy has repaired and maintained a construction entrance at no cost to residents or the Association to help divert traffic away from the main entrance.

<u>DETAILED RESPONSE TO MARCH 30 LETTER</u>

1. Developer Loan

a. Improper Granting

Your letter claims that, due to the operation of CCR Section 8.2, "each of the 2014 and 2015 $65,000 Developer 'Loans' must be re-characterized as a Developer Subsidy, and the 12/31/2020 $525,499 cumulative 'Loan' balance must be reduced by $130,000." This demand appears to be based on an improper reading of CCR Section 8.2.

The first sentence of Section 8.2 of the CCRs addresses Declarant's annual obligation to pay assessments on the Units it owns as well as an additional amount that is equal to either (a) "its regular assessment amount on all of its unsold Units" or (b) "the difference between the amount of assessments levied on all other Units subject to assessment and the amount of actual expenditures by the Association during the fiscal year." The second sentence contains a requirement that the Declarant will be deemed to have elected to continue paying the additional assessment amount on the same basis that it did the prior year unless it otherwise notifies the

Board in writing at least 60 days before the beginning of the fiscal year. Notably, the second sentence of section 8.2 – which is italicized in your letter - does not address any subsidies from the Declarant, but only its additional assessment.

Declarant subsidies are instead addressed in the fifth paragraph of CCR section 8.3. That paragraph provides in full:

> During the Class "B" Control Period, the Declarant may, but shall not be obligated to, reduce the General Assessment for any fiscal year by payment of a subsidy and/or contributions of services and materials (in addition to any amounts paid by Declarant under Section 8.2), which may be treated as either a contribution or an advance against future assessments due from the Declarant, or a loan, in the Declarant's discretion. Any such anticipated payment or contribution by the Declarant shall be disclosed as a line item in the Common Expense budget. Payments by the Declarant in any year shall under no circumstances obligate the Declarant to continue such payments in future years and the treatment of such payment shall be made known to the membership, unless otherwise provided in a written agreement between the Association and the Declarant.

Therefore, CCR 8.3 clarifies the following points regarding Declarant subsidies: (a) they are separate from the amounts due under section 8.2; (b) they may be treated either as a contribution or an advance against future assessments due from Declarant, or as a loan, at the Declarant's discretion; and (c) the payment of any such subsidies do not obligate the Declarant to continue such payments in future years.

Since becoming the Declarant for Legacy at Jordan Lake in April 2014, F-L Legacy has paid all assessments required by CCR section 8.2. Even though it was not obligated to do so, F-L Legacy responded to requests from the Association management company to provide subsidies when the Association had a negative operating income. All subsidies paid by F-L Legacy were in the form of zero-interest loans that could be repaid when the Association was in a more stable financial position, and all were disclosed in various financial statements prepared by the Association management company and made available to Unit owners. This treatment of Declarant subsidies is consistent with language in the Association Financial statements quoted at the bottom of page 3 of your letter: "Declarant Loan: Funds received from Freehold Communities to subsidize Association cash flow. *All developer subsidy funds will be recorded as loan on the balance sheet and will be paid back to Freehold Communities at the point that the [Association] is self-sustaining*." (emphasis added) Accordingly, the loans made by F-L Legacy to the Association are in full compliance with the CCR and applicable law, and there is no basis to recategorize any of the subsidies provided by F-L Legacy or to decrease the outstanding loan balance. Instead, the loans must be repaid at some point, and Declarant has decided that the financial status of the community is stable enough to begin repayment.

b. Failure to Disclose/Advise

As set forth above, and as noted in your letter, the various loans made by the Declarant to the Association are disclosed in the financial statements and other documentation prepared by the Association management company and made available to Association members. When builders close on lots they become Association members and receive the same notices and access to financial information that other members do. In summary, all subsidies (including all loans) provided by Declarant to the Association have been fully disclosed in the Association financials as required by the CCR.

c. Improper Budgeted Repayment by HOA

Your letter correctly notes that Declarant has consistently stated that its loans to the Association will be paid back at the point that the Association is self-sustaining. As of this date, Declarant has not received any repayments on any of its loans. However, the financial information prepared by the Association indicates that the Association will be self-sustaining in 2021, and therefore a partial repayment of the loan balance has been budgeted. This decision is consistent with Declarant's prior representations and its rights under the CCR.

2. Golf Course

a. Failure to Ensure that Aqua NC Renewed Effluent Permit to Irrigate Golf Course

Declarant's understanding of the facts relevant to this issue is quite different than what is recited in your letter. At the time that F-L Legacy became the Declarant, Aqua NC did not have a permit to spray effluent water onto the golf course. Declarant did not become aware of this fact until it was informed on May 17, 2018 (not 2017 as claimed in the letter) that the effluent spray had been shut down. Declarant now understands that the previous developer had sprayed effluent onto the golf course without a permit. In order to prevent the grass on the golf course from dying, the golf course was watered with potable water until the requisite permit could be obtained. Even though the golf course is owned by the Association, Declarant directed its engineer to work with Aqua in order to obtain the permit as quickly as possible. In addition to the lack of a permit, it was discovered that the irrigation system installed by the previous developer was not adequate for effluent spray. The state permitting agency required the system to be modified to accept effluent spray once the permit was received, and these modifications included (but were not limited to) new (and additional) spray heads, meter, drainage covers, and direction changes for various heads.

As an amenity for the enjoyment of all owners, the golf course was deeded to the Association when it opened in September 2017. The charges related to the watering of the golf course and modification of the irrigation system were therefore appropriately paid by the Association.

b. Other Golf Course Expenditures Improperly Charged to HOA

In addition to converting the irrigation system so that it could spray effluent water, the Board has also approved the following measures related to the golf course: sprigging of greens to extend grass life, replacement of greens to a long-term grass appropriate for the North Carolina climate, and covers to protect the greens from frost. None of these measures can fairly be characterized as an "upgrade" of the golf course. Rather, they are all reasonable and necessary measures to ensure the longevity of the golf course and to reduce future repair and/or replacement expenses. Accordingly, there is nothing improper about the Board's decision to implement them.

3. Roads

The CCR expressly provides that the Association is responsible for the maintenance of any roads within the Legacy Community that have been dedicated to it. *See* CCR § 5.1(a)(ii). The CCR also expressly provides that the Declarant and Builders authorized by the Declarant may use the streets on the Properties for activities reasonably required (in the sole opinion of Declarant) or incidental to the development of the Properties and/or the construction or sale of

Units. *See* CCR § 13.2. Further, the roads are constructed to accommodate a wide variety of vehicular traffic, including construction vehicles, moving vans and delivery trucks. Nevertheless, F-L Legacy repaired and implemented a second lift to all phase 1 roadways at its cost when it became the Declarant in 2014. As set forth in CCR § 5.1(f), Declarant is responsible for the maintenance of streets prior to conveyance to the Association. To that end, Declarant is in the process of installing new roads to design standards and will install the surface lift for each phase when all homes in it are built. Repair of the first lift and curbs in the various development phases occurs when the second lift of asphalt is applied. Declarant has bonds in place with Chatham County for the second lift. Further, Declarant has repaired and maintained at its cost the construction entrance several times so that it can be utilized to divert heavy traffic away from the main entrance.

4. Irrigation, Repairs, & Capital Expenditures

The Declarant believes that the 2014-2017 irrigation expenses referenced in your letter were costs related to the construction of a pump and pipe system to transfer the water to the golf course pond, so it could be used for irrigation. The reason that the costs were categorized as Golf Course Maintenance is likely because the water transfer was required by the need to water the golf course.

With regard to the second point raised in this section of the letter, it is not uncommon for there to be necessary expenditures during the course of a year that were not anticipated at the time the annual budget was produced. Although the Board attempts to accurately anticipate expenses, no organization can predict all costs that may arise.

5. Improper Attribution of Developer Expenses or Unnecessary (Discretionary) Expenses to HOA

a. BMP Maintenance or Storm Water Basin Maintenance; Pond Maintenance

The ponds that the Association has paid to convert were all built by the prior developer in connection with Phase 1 and were dedicated to the HOA without being converted. Although the Association had the opportunity to pursue the prior developer for the conversion costs, the developer was bankrupt and the Board determined that it would likely cost more money to pursue the developer than to simply convert the ponds. All phase 2 ponds were converted by Meritage prior to being dedicated to the Association, and no ponds from subsequent phases have been dedicated except for one pond in phase 5A1, which was dedicated after conversion and county certification. Maintenance costs for ponds and other water features turned over to the Association are the express responsibility of the Association to maintain. *See* CCR § 5.1(a)(i). In fact, there is an existing Association contract for this type of maintenance work. That being the case, Declarant acknowledges that it is responsible for the costs of converting and maintaining/cleaning up the ponds that have not yet been turned over to the Association and will continue to bear those costs. Consistent with that obligation, F-L Legacy has a third-party inspection firm on site each week – and after rain events - to monitor erosion control.

b. Waterfall

The waterfall was constructed prior to F-L Legacy becoming the Declarant, and continues to be a problem for the community. It has experienced leaks, failed pumps, failed timers, cracks, etc. Due to the recurring maintenance and repair expenses, every annual Association Budget projects an annual waterfall repair expense. However, there is no indication that runoff from Phase 6 that has impacted the waterfall, and no mud or silt from development activities appears

to be entering the pond that supplies water to the waterfall. More importantly, it is not Declarant's responsibility to maintain the pond or to ensure water quality. See CCR §§ 4.13, 5.1(a)(i) and (a)(iii). Unfortunately, under normal rainfall conditions the coloration of the water used in that pond changes to a reddish-brown color due to the natural runoff from the clay soil in and around the pond. This phenomenon is normal and permitted in any watershed.

c. Spray Fields, Meadows, Greens and Other Common Areas

With regard to the spray fields referenced in your letter, the irrigation system has been dedicated to Aqua, which has a usage and maintenance easement over the real property the system occupies. However, the underlying real property is owned by the Association, which is responsible for maintenance such as mowing the spray fields. See CCR §§ 5.1(a)(i), (a)(iii). The Declarant is installing new spray fields at its cost and is working with Aqua to determine the limits of necessary future fields.

It is worth noting that Declarant has invested considerable resources in improving the community's common areas. Although it had no obligation to do so, F-L Legacy improved the community's streets (an approximate $500,000 expense) when it took over as Declarant and built a $2.6 million clubhouse amenity that it dedicated to the Association. We are willing to discuss appropriate processes and inspections that can be undertaken prior to turnover to address any reasonable concerns over these improvements.

6. Landscape Installation/Maintenance

Declarant makes every effort to grade common areas so that they drain properly. If there are any areas near the clubhouse with standing water, Declarant is willing to explore a solution. However, it is entirely normal for there to be muddy areas on nature trails, which are not designed to be dry at all times.

Declarant agrees that there were plants installed at the clubhouse that did not survive. However, all such plants were replaced by Declarant at its cost prior to dedicating the amenity to the Association.

7. Mismanagement of Other Infrastructure Construction, Repairs and Maintenance

At the outset, I note that this section of your letter contains no details to which Declarant can specifically respond. However, I will state that the construction of various listed amenities (e.g., the clubhouse, tennis courts, pool, gym, etc.) were all managed and inspected by architects, contractors, and county officials. The Declarant did not build the waterfall or the gatehouse, both of which were dedicated to the Association by the previous Declarant. A few residents voiced concerns about the construction of the amenity buildings and contacted the Chatham County Building Department, which inspected the buildings multiple times. These inspections identified no issues and the Department subsequently issued a Certificate of Occupancy. Further, the Declarant hired a third-party inspector to survey the amenity buildings, and had the inspector return to confirm that all identified repairs had been completed prior to dedication. The Declarant also offered to meet with the two owners who had voiced the concerns about the amenity construction. One of the owners became so verbally abusive and threatening during the meeting that the Declarant's employee had to leave for fear of a physical altercation. Finally, the Declarant conducted a one-year punch walk with the contractor and landscaper, and all noted items were repaired at Declarant's cost.

8. Improper and Unwarranted Increase in Homeowner Monthly Dues

The Association has the right and the responsibility under the governing documents to levy assessments (dues) necessary to pay the community's Common Expenses. Notably, the Board did not raise dues from the time F-L Legacy became Declarant in 2014 through 2020. The decision not to raise dues during this period (despite the numerous times that the Association experienced a negative cashflow) was so the residents who purchase homes early would not have to bear the full cost of the subsidies required to meet the Association's necessary expenses. Therefore, instead of immediately raising dues to meet the financial shortfalls, the decision was made to defer these costs and spread them out over a larger pool of residents at a later date when the Association's revenues exceeded its costs. The modest dues increase allows the Association to be placed on a firm long-term financial footing while still enabling the repayment of Declarant's subsidies. Further, the dues increase is not deterring new sales, which have tripled during the first three months of 2021 when compared with 2019 and 2020.

9. Failure to Enforce CC&Rs and ARB Guidelines

Once again I must note that this section of your letter provides no details to which Declarant can specifically respond. That being the case, your letter correctly notes that Meritage was able to exempt itself and its homes (Phases 1 and 2) from the ARB Design Guidelines through the 5th Amendment to the CCRs. This exemption, however, does not apply to Owners who purchase Units from Meritage within the Meritage Property. F-L Legacy established a different set of ARB Guidelines for Phases 3-6. These guidelines mirrored the existing ones but allowed for modified rules for smaller lots as was envisioned in the original master plan for the community.

Declarant has consistently enforced the guidelines pertaining to phases 3-6 as well as the post-construction guidelines pertaining to phases 1 and 2. Declarant's enforcement of the post-construction guidelines is evidenced by the custom homebuilders buildings on phase 1 and 2 lots that are currently going through ARB review. The Association's architect, Michael Hubbard, participates in all major ARB reviews such as home and shed additions, pool additions, and architectural changes, and must approve all such additions.

10. Conclusion

In summary, Declarant's actions are all clearly supported by the CCR and other applicable authority, and your claims lack proper factual and legal support. However, while Declarant disagrees with the statements in your letter, it remains open to discussing your concerns and exploring a reasonable resolution. To that end, please contact me to coordinate further discussions.

Sincerely,

Russell Killen

cc: Unit Owners
Chatham County Board of Commissioners